

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA**

**JM a minor
by and through TANYA LARDIERI
his Parent and Next Friend**

Plaintiff,

v.

CIVIL ACTION NO.: 2:15-cv-04822

**LOGAN COUNTY BOARD OF EDUCATION,
*et al,***

Defendants.

DEFENDANTS' MOTION TO DISMISS

COME NOW the Defendants, Logan County Board of Education, Logan Middle School, Phyllis Adkins, William Davis, Mark McGrew, Dr. Pat White, and James Frye in their official capacities, Wilma Zigmond, Ernestine Sutherland, David Burroway, Howard Rockhold, Anita Gore, and Christopher Marcus each in their individual and official capacities by counsel, Duane J. Ruggier II, Jacob D. Layne, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe PLLC, and hereby move this Honorable Court, pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure* and Local Rule 7.1, to dismiss the Plaintiff's *Complaint*, with prejudice. Defendants contend that the claims contained within Plaintiff's *Complaint* should be dismissed based upon the following reasons, which are more fully articulated in Defendants' Memorandum of Law in Support of Motion to Dismiss:

1. Plaintiff's official capacity claims and claims asserted against Logan Middle School should be dismissed as such claims are duplicative of Plaintiff's claims asserted against the Board;
2. Plaintiff's state free speech and due process claims against the individual defendants should be dismissed as said defendants are statutorily immune from suit;

3. Plaintiff's claims against Defendant Christopher Marcus should be dismissed as Plaintiff lacks standing to assert such claims;
4. Plaintiff's federal and state free speech claims under Counts One and Four should be dismissed as Defendants are entitled to qualified immunity;
5. Plaintiff's federal due process claim under Count Two should be dismissed as Plaintiff fails to plausibly plead the existence or implementation of an unconstitutional policy by the individual defendants;
6. Plaintiff's federal and state due process claims under Counts Two and Five should be dismissed as Plaintiff fails to plausibly plead the existence or implementation of an unconstitutional policy by the individual defendants;
7. Plaintiff's federal and state free speech claims as well as his federal due process claim asserted against the Board, superintendent, and principal, under Counts Six, Seven and Eight should be dismissed as the school dress policies are constitutional.

WHEREFORE, for the reasons articulated more fully in their Memorandum of Law in Support of Motion to Dismiss, the Defendants, Logan County Board of Education, Logan Middle School, Phyllis Adkins, William Davis, Mark McGrew, Dr. Pat White, and James Frye in their official capacities, Wilma Zigmond, Ernestine Sutherland, David Burroway, Howard Rockhold, Anita Gore, and Christopher Marcus each in their individual and official capacities move this Honorable Court, pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, for an Order dismissing Plaintiff's Complaint, with prejudice, and for such other and further relief as this Honorable Court deems necessary.

**LOGAN COUNTY BOARD OF EDUCATION,
LOGAN MIDDLE SCHOOL, PHYLLIS ADKINS,
WILLIAM DAVIS, MARK MCGREW, DR. PAT
WHITE, JAMES FRYE, WILMA ZIGMOND,
ERNESTINE SUTHERLAND, DAVID
BURROWAY, HOWARD ROCKHOLD, ANITA
GORE, and CHRISTOPHER MARCUS,**

BY COUNSEL,

/s/Duane J. Ruggier, II

DUANE J. RUGGIER II (WVSB #7787)

JACOB D. LAYNE (WVSB #11973)

**PULLIN, FOWLER, FLANAGAN,
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CERTIFICATE OF SERVICE

The undersigned counsel for Defendants do hereby certify on August 31, 2014, that a true copy of “*Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint*” has been filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the below listed CM/ECF participant:

Benjamin F. White, Esquire
Benjamin F. White, Attorney at Law
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Chapmanville, West Virginia 25508
Counsel for Plaintiff

s/Duane J. Ruggier II
DUANE J. RUGGIER II (WVSB #7787)
JACOB D. LAYNE (WVSB #11973)

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